

K Kendall Brill Klieger**FAX**

DATE: September 21, 2011
FROM: Patricia S. Perello
310.272.7906
pperello@kbkfirm.com
RE:
PAGES: 15 (including cover page)

RECIPIENT	FAX NO.
Best Western Vista Manor Lodge, Attn: Carmen Estrada-Polley (guest)	707-964-4779

MESSAGE: Anne,
Per our conversation on the phone, please charge my credit card for any fees and let me know how much the charge is. Please make 10 copies for your guest, Carmen Estrada-Polley, of the attached document (please do not copy this fax cover sheet).

Thank you,

Patricia Perello

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Kendall Brill & Klieger LLP

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TELEPHONE (818) 637-2117
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September 21, 2011

Mr. Douglas Bosco, Chairman
Members of the Commission
California Coastal Conservancy
1330 Broadway, 13th Floor
Oakland, CA 94612-2530

Re: September 22, 2011 Meeting
Agenda Item 15: Ackerberg Public Access Easement Held By AFA

Dear Mr. Bosco and Members of the Commission,

Our offices represent Lisette Ackerberg and the Lisette Ackerberg Trust in connection with the easement over Mrs. Ackerberg's property in Malibu (the "Easement") which is the subject of Item 15 on the Conservancy's September 22nd Public Meeting agenda.

I write to encourage you to continue this matter until your next public meeting to allow the parties to fruitfully proceed in settlement discussions that are currently underway. Mrs. Ackerberg is actively responding to the Commission's recent settlement proposal and is in the process of convening a meeting through counsel in the hopes of reaching a mutually agreeable outcome that resolves the issues for all parties.

Mrs. Ackerberg does appreciate that the Coastal Commission and the Coastal Conservancy have reacted negatively to the settlement agreement between Mrs. Ackerberg and Access For All ("AFA"). We hope you will understand that it was not Mrs. Ackerberg's intent through that settlement to in any way contravene the Coastal Act.

At the same time, in 1985, the Commission granted the Ackerbergs a Coastal Development Permit ("CDP") with the express findings that the County of Los Angeles owns an accessway within 500 feet of the Ackerberg property and that it was the policy of the Commission that private easements would not be open before nearby public easements. The Ackerbergs relied on those findings and policy in undertaking permitted development at substantial expense, and Mrs. Ackerberg has a legitimate interest in seeking to retain the benefit of those findings. While we understand the Commission and the Conservancy may view things differently, Mrs. Ackerberg's position is reasonable and held in good faith and is based on well-established principles discouraging retroactive limitations on property rights.

Mr. Douglas Bosco, Chairman
Members of the Commission
California Coastal Conservancy
September 21, 2011
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While Mrs. Ackenberg remains, out of necessity, prepared to pursue her legal rights, her primary hope is that she can resolve this issue finally in a manner that achieves finality for all and that respects the legitimate interests of all parties. It serves neither the public interest nor Mrs. Ackenberg's own interest to delay work on a negotiated end to this dispute. Even though Mrs. Ackenberg believes that AFA has managed the Easement appropriately, she is prepared to work cooperatively with another entity selected by the Conservancy. However, a decision related to the management of the easement at this time—with settlement negotiations underway—risks undermining, rather than advancing, efforts to achieve a prompt resolution between Mrs. Ackenberg, the Conservancy, and the Coastal Commission, as an effort to integrate new management now is likely to complicate settlement discussions and introduce further uncertainties.

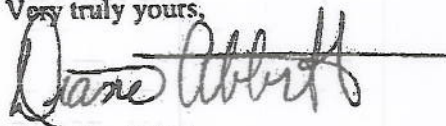
Moreover, the Staff Recommendation regarding the revocation of AFA's holding of the Easement is based upon a judgment in a writ action brought in the Los Angeles Superior Court, dated July 5, 2011 (Exhibits 16 and 17) upholding an order from the Coastal Commission (the "Commission") requiring opening of the Easement. That trial court order, however, is not final. See California Code of Civil Procedure § 916. Rather, the order is now before the California Court of Appeal, which may reverse the decision of the trial court.

Further, as you may be aware, both the Conservancy and the Coastal Commission brought a motion to intervene and vacate the stipulated judgment in the trial court case which resulted in the settlement agreement between AFA and Mrs. Ackenberg (*Access for All v. Ackenberg*, Los Angeles Superior Court No. BC405058). The trial court in that case has already determined that the status quo should be maintained pending the appeal. On August 23, 2011, the trial court ruled that case will remain stayed until March 13, 2012, pending the Ackenberg Appeal. A similar concern for restraint should guide the Board here. I attach to this letter copies of the brief submitted by Mrs. Ackenberg in the trial court in support of a stay, and the trial court's order granting such a stay.

Mrs. Ackenberg recognizes, of course, that the Conservancy has an interest in promoting public access to the Malibu Coast. However, that interest would best be protected by allowing breathing space for all parties to reach a reasonable settlement concerning this matter, and by avoiding precipitous action that would disturb AFA's rights and those of Mrs. Ackenberg based on a non-final judicial ruling that may be reversed.

On behalf of Mrs. Ackenberg, thank you very much for considering these views.

Very truly yours,


Diane R. Abbitt

Mr. Douglas Bosco, Chairman
Members of the Commission
California Coastal Conservancy
September 29, 2011
Page 3

DRA/dir

cc: Jack Judkins, (w/o enclosures)
James Patterson (w/o enclosures)
Steve Hoyer (w/o enclosures)
Laura Brill (w/o enclosures)
Steve Kaufmann (w/o enclosures)
Lisette Ackenberg (w/o enclosures)

ORIGINAL FILED

AUG 23 2011

LOS ANGELES
SUPERIOR COURT

RICHARDS, WATSON & GERSHON
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Attorneys for Defendants,
LISETTE ACKERBERG TRUST and
LISETTE ACKERBERG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

ACCESS FOR ALL, a California non-
profit corporation,

Plaintiff,

vs.

LISETTE ACKERBERG TRUST,
a Trust, LISETTE ACKERBERG,
individually and as Trustee of the
LISETTE ACKERBERG TRUST, and
DOES 1-10, Inclusive,

Defendants.

Case No. BC405058

**[PROPOSED] ORDER GRANTING EX
PARTE APPLICATION FOR
CONTINUANCE OF THE HEARING
DATE ON POST-JUDGMENT
MOTIONS FOR LEAVE TO
INTERVENE, VACATE STIPULATED
JUDGMENT AND STAY CASE**

*Assigned for All Purposes to The
Honorable Rolf M. Treu*

Date: August 23, 2011
Time: 8:30 a.m.
Dept.: 58

Action Filed: January 5, 2009

Final Judgment Entered: June 19, 2009

-1-

[PROPOSED] ORDER GRANTING EX PARTE APPLICATION FOR
CONTINUANCE OF HEARING DATE

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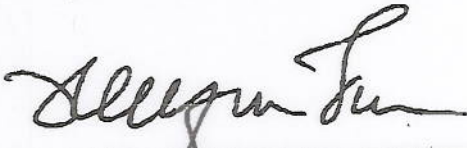
RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

COPY

IRIN RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 On August 23, 2011, at 8:30 a.m., Defendants Lisette Ackerberg Trust and Lisette
2 Ackerberg ("Defendants") made an *ex parte* application for continuance of the hearing
3 date on the post-judgment motions of the California Coastal Commission and State
4 Coastal Conservancy to intervene, vacate the stipulated judgment and stay the case.
5 Steven H. Kaufmann of Richards, Watson & Gershon and Diane R. Abbitt appeared on
6 behalf of Defendants. Jamee J. Patterson appeared on behalf of the California Coastal
7 Commission and State Coastal Conservancy.

8 The Court has reviewed the *ex parte* application and supporting papers and finds
9 good cause for the requested continuance. Accordingly, IT IS HEREBY ORDERED that
10 the hearing on the motions of the California Coastal Commission and State Coastal
11 Conservancy to intervene, vacate the stipulated judgment and stay the case is continued
12 from September 13, 2011 to 3-13, 2012. *Court is to*
13 *be decided forthwith if remittitur is issued*
14 *before 3-13-12*
Dated: August 23, 2011

15 
16 JUDGE OF THE SUPERIOR COURT
17 ROLF M. FREIL
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28

-2-

[PROPOSED] ORDER GRANTING EX PARTE APPLICATION FOR
CONTINUANCE OF HEARING DATE

1 RICHARDS, WATSON & GERSHON
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AUG 23 2011

LOS ANGELES
 SUPERIOR COURT

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9 Attorneys for Defendants,
 LISETTE ACKERBERG TRUST and
 10 LISETTE ACKERBERG

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

13
 14 ACCESS FOR ALL, a California non-
 profit corporation,

15 Plaintiff,

16 vs.

17 LISETTE ACKERBERG TRUST,
 18 a Trust, LISETTE ACKERBERG,
 individually and as Trustee of the
 19 LISETTE ACKERBERG TRUST, and
 DOES 1-10, Inclusive,

20 Defendants.
 21
 22
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 28

Case No. BC405058

EX PARTE APPLICATION OF
 DEFENDANTS LISETTE
 ACKERBERG TRUST AND LISETTE
 ACKERBERG FOR CONTINUANCE
 OF HEARING DATE ON POST-
 JUDGMENT MOTIONS FOR LEAVE
 TO INTERVENE, VACATE
 STIPULATED JUDGMENT AND
 STAY CASE

MEMORANDUM OF POINTS AND
 AUTHORITIES (ATTACHED);

DECLARATION OF STEVEN H.
 KAUFMANN (ATTACHED)

*Assigned for All Purposes to
 The Honorable Rolf M. Treu*

Date: August 23, 2011

Time: 8:30 a.m.

Dept.: 58

Action Filed: January 5, 2009

Final Judgment Entered: June 19, 2009

-1-

DEFENDANTS' EX PARTE APPLICATION FOR CONTINUANCE OF HEARING ON POST-JUDGMENT
 MOTIONS, MEMO. OF POINTS AND AUTHORITIES AND KAUFMANN DECL. IN SUPPORT

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 ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

COPY

EX PARTE APPLICATION

Defendants Lisette Ackerberg Trust and Lisette Ackerberg (collectively "Ackerberg") hereby apply *ex parte* for a further continuance of the hearing date on the motions of the California Coastal Commission and State Coastal Conservancy (collectively, "Commission") to intervene, vacate the stipulated judgment, and stay the case, presently set for September 13, 2011 to March 13, 2012 (or such other date after March 13, 2012 as is convenient to the Court).

The grounds for this application are the following:

(1) Over two years ago, on June 19, 2009, plaintiff Access for All and Defendant Ackerberg settled this action brought to enforce the Coastal Act, and this Court entered a final "Judgment Pursuant to Stipulation";

(2) As required by the Judgment, on June 26, 2009, AFA filed a lawsuit against the County of Los Angeles and 73 condo owners to compel the opening of a County public access easement to the beach, which lawsuit is pending;

(3) On July 8, 2009, the Commission conducted an administrative cease and desist proceeding of its own on the same alleged violations of the Coastal Act, and, over Ackerberg's objection and despite this Court's Judgment, the Commission entered a separate and different cease and desist order against Ackerberg;

(4) On August 4, 2009, Ackerberg filed a writ action against the Commission, *Ackerberg v. California Coastal Commission*, LASC Case No. BS 122006 ("writ action"), to overturn its administrative decision;

(5) On September 11, 2009, the Commission noticed a motion to intervene, vacate stipulated judgment and stay case, which it noticed for hearing on October 29, 2009; plaintiff Access for All and Ackerberg jointly opposed the motion. The Commission sought the stay to allow for "resolution of the litigation over the Commission's issuance of a cease and desist order to Ackerberg."

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DEFENDANTS' EX PARTE APPLICATION FOR CONTINUANCE OF HEARING ON POST-JUDGMENT
MOTIONS, MEMO. OF POINTS AND AUTHORITIES AND KAUFMANN DECL. IN SUPPORT

1 (6) On December 7, 2009, this Court ordered a continuance of the hearing on
2 the Commission's motions to June 22, 2010, specifically to allow first for resolution of
3 the litigation over the cease and desist order in the writ action first; the hearing was
4 thereafter continued three times by stipulation to its current date, September 13, 2011.

5 (7) On June 5, 2011, the Honorable James C. Chalfant, in Department 85,
6 denied the petition filed in the writ action, and, on July 28, 2011, the court entered
7 judgment for the Commission, notice of which was served on August 3, 2011.

8 (8) On August 22, 2011, Ackerberg filed a notice of appeal from the judgment
9 in the writ action, thereby staying the operation of the judgment. (C.C.P. § 916(a).)

10 (9) A further continuance of the hearing date on the Commission's motion to
11 intervene, etc., in this action continues to be appropriate because the litigation concerning
12 the writ action and the underlying cease and desist order has not yet been finally resolved,
13 and action on the Commission's motions at this time continues to be premature. Until the
14 writ action is decided on appeal and the appellate court determines whether the judgment
15 in that case should be reversed or not, this Court need not hear and decide the
16 Commission's motion or otherwise consider whether to resurrect the litigation which the
17 final judgment in this case concluded.

18 This *ex parte* application is based upon this notice and application, the attached
19 Memorandum of Points and Authorities, the attached Declaration of Steven H. Kaufmann
20 and exhibits thereto, and such other matters as the Court deems relevant.

21 Pursuant to C.R.C. Section 3.1202, the name, addresses, and telephone numbers of
22 counsel for the California Coastal Commission, and the State Coastal Conservancy and
23 the Executive Director of Access for All, its counsel having withdrawn from the case,
24 are:

25 ///

26 ///

1. Steve Hoyer
P.O. Box 1704
Topanga, CA 90290
Executive Director of Plaintiff Access for All
2. Kamala D. Harris
Attorney General
Jamee Jordan Patterson
Supervising Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92186-5266
Attorneys for California Coastal Commission and
State Coastal Conservancy

Notice of this *ex parte* application was given to counsel for the California Coastal Commission/State Coastal Conservancy and to Mr. Hoyer. (Declaration of Steven H. Kaufmann, Exh. 1.) Mr. Hoyer, on behalf of plaintiff Access for All, supports this application and was willing to stipulate to the continuance sought as plaintiff Access for All, post-judgment, is currently unrepresented by counsel. Ms. Patterson, representing the Commission, was unwilling to stipulate to continue the hearing date, and has indicated that an attorney in the Attorney General's office will appear to oppose this application.

DATED: August 22, 2011

DIANE R. ABBITT
LAW OFFICES OF DIANE ABBITT

and

RICHARDS, WATSON & GERSHON
A Professional Corporation
STEVEN H. KAUFMANN

By: 

Steven H. Kaufmann

Attorneys for Defendants
LISETTE ACKERBERG TRUST and
LISETTE ACKERBERG

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DEFENDANTS' EX PARTE APPLICATION FOR CONTINUANCE OF HEARING ON POST-JUDGMENT
MOTIONS, MEMO. OF POINTS AND AUTHORITIES AND KAUFMANN DECL. IN SUPPORT

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This *ex parte* application seeks to further continue the hearing date on the post-judgment motions filed by the California Coastal Commission and State Coastal Conservancy (collectively, "Commission") to intervene in the case, vacate the stipulated judgment, and stay the case, presently set for September 13, 2011. The reason for the continuance remains unchanged from this Court's determination in December 2009 to continue the matter: The related writ action, *Ackerberg v. California Coastal Commission*, LASC Case No. BS 122006, challenging the Commission's authority to separately issue an administrative cease and desist order on the same facts resolved by this Court's judgment, has not been finally resolved. Although Judge Chalfant recently ruled for the Commission in the writ action, the ruling has been appealed, and thus the need to address the Commission's motions and determine whether to resurrect this concluded lawsuit should await a final disposition in the appellate court. Accordingly, this application requests that the hearing on the Commission's motions be continued for six months to March 13, 2012, or to a date thereafter that is convenient to the Court.

II. PROCEDURAL BACKGROUND

In January 2009, with the knowledge of the Coastal Commission, plaintiff Access for All ("AFA") filed this citizen enforcement action under the Coastal Act ("Act"; Pub. Res. Code, § 30000 *et seq.*) concerning alleged violations of the Act involving a public access easement on Defendant Ackerberg's property. (See Exh. 6 [Decl. of Steve Hoyer in Oppos. To Com's Motions To Intervene, Etc., filed Oct. 15, 2009].) The Commission and Conservancy elected not to seek to intervene.

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DEFENDANTS' EX PARTE APPLICATION FOR CONTINUANCE OF HEARING ON POST-JUDGMENT MOTIONS, MEMO. OF POINTS AND AUTHORITIES AND KAUFMANN DECL. IN SUPPORT

1 As explained in the attached Declaration of Steven H. Kaufmann, on June 19,
2 2009, after extended settlement negotiations which the Court initially explored settlement
3 at the first CMC, AFA and Ackerberg settled the case, and the Court entered a final
4 judgment pursuant to stipulation in the action. (Exh. 2.) The judgment brought this
5 litigation to a close, and committed AFA and Ackerberg to an expedited and costly
6 course of action that required, among other things, AFA to file a new lawsuit against the
7 County of Los Angeles and 73 condo owners to compel the opening of a County public
8 access easement from Pacific Coast Highway to Carbon Beach, in Malibu. That action,
9 filed over two years ago on July 26, 2009, is currently pending in Department 28.
10 (*Access for All v. County of Los Angeles*, LASC Case No. BC 416700.)

11 Despite the judgment, on July 8, 2009, the Commission held an administrative
12 cease and desist proceeding of its own on the same alleged violations of the Coastal Act.
13 Over Ackerberg's objection, the Commission entered a separate and different cease and
14 desist order against Ackerberg, thus subjecting her to potentially conflicting obligations
15 akin to a form of "double jeopardy."

16 On August 4, 2009, Ackerberg filed the above-referenced writ action against the
17 Commission to overturn the administrative cease and desist decision.

18 On September 11, 2009, two months after its decision, the Commission noticed
19 motions to intervene, vacate the stipulated judgment, and stay the case so that the
20 litigation relating to the cease and desist order could be completed. As the Commission
21 explained as the basis for its request for a stay:

22 "The Court should stay this case to allow resolution of the litigation over the
23 Commission's issuance of a cease and desist order to Ackerberg."

24 (Exh. 3 [Commission's Memo. of Ps and As in Support of Motions to Intervene,
25 Etc., p. 13, lines 6-7; emphasis added.])

26 ///

1 The Commission noticed its motion for a hearing a month and half later on October 29,
2 2009.

3 On December 7, 2009, after hearing from all parties, this Court continued the
4 hearing on the Commission's motions to June 22, 2010, specifically to permit resolution
5 of the litigation in the writ action over the cease and desist order to occur first.
6 Thereafter, the hearing on the Commission's motions was continued by stipulation three
7 times to its current date, September 13, 2011.

8 On June 5, 2011, Judge Chalfant, in Department 85, denied Ackerberg's petition
9 in the writ action. Judgment was entered for the Commission on July 28, 2011, and
10 notice of entry of the judgment was served on August 3, 2011.

11 On August 22, 2011, Ackerberg filed her notice of appeal from the judgment in
12 the writ action, along with a notice of election to prepare an appellants' appendix to
13 expedite the appeal. (Exhs. 4 and 5.)

14 **III. THE COURT SHOULD CONTINUE THE HEARING ON THE**
15 **COMMISSION'S POST-JUDGMENT MOTIONS PENDING**
16 **RESOLUTION OF THE APPEAL IN THE WRIT ACTION**

17 The court, in the exercise of its discretion, may continue the hearing date of a
18 motion upon the showing of good cause. (Cal. Practice Guide, Civil Procedure Before
19 Trial (Rutter Group 2010), § 9.116.1, p. 9(1)-81.)

20 By its post-judgment motions, the Commission has sought extraordinary relief in
21 this case – to intervene and vacate a judgment well after AFA and Ackerberg have
22 complied with the final judgment entered by this Court, to vacate the judgment, and then
23 to stay the case. The Commission seeks this relief although it was aware of this case –
24 and by necessity the possibility for settlement – from the beginning. After reviewing the
25 procedural posture of this case and the writ action, this Court took the prudent course,
26 awaiting resolution of the litigation over the issuance of a cease and desist order to
27

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28 DEFENDANTS' EX PARTE APPLICATION FOR CONTINUANCE OF HEARING ON POST-JUDGMENT
MOTIONS, MEMO. OF POINTS AND AUTHORITIES AND KAUFMANN DECL. IN SUPPORT

1 Ackerberg. Because Ackerberg has appealed from the judgment in the writ action, this
2 same reason supports continued restraint by this Court until the appeal is decided. As a
3 matter of law, the filing of a notice of appeal stays the operation of the trial court's
4 judgment. Under California Code of Civil Procedure section 916(a), in a case of this
5 kind, "the perfecting of an appeal stays proceedings in the trial court upon the judgment
6 or order appealed from or upon the matters embraced therein or affected thereby,
7 including enforcement of the judgment or order" Accordingly, Judge Chalfant's
8 ruling, which Ackerberg believes to be based on errors of law and as to which Ackerberg
9 has a right to appeal, provides no basis for deviating from the stay that the Commission
10 previously insisted was appropriate.

11 The continuance of the hearing date on the Commission's motions remains
12 appropriate. At the present time, there is no need for this Court to rule until the outcome
13 of the appeal in the writ action. Indeed, to rule now would be premature and highly
14 prejudicial to plaintiff Access for All and Ackerberg. First, the Commission has already
15 litigated its enforcement action against Ackerberg in an administrative proceeding and in
16 defending against the writ action and has no legitimate interest at this stage - having
17 asked the Court to defer - to litigate against Ackerberg again with respect to the same
18 claims. As to AFA and Ackerberg, if the appellate court reverses the judgment in the
19 writ action, then this Court should deny the Commission's attempt to unwind the
20 judgment. This Court's determination to accept the settlement and enter a final judgment
21 in the instant case is entitled to a clear presumption of validity. (Evid. Code, § 664.)
22 AFA and Ackerberg deserve the opportunity to preserve the judgment and their
23 substantial efforts since June 2009 to implement it, and Ackerberg deserves to have her
24 appeal fairly heard and decided in the writ action. By the same token, if the appellate
25 court affirms Judge Chalfant's ruling, there will have been no benefit in this Court's
26 additional proceedings in the matter.

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28 DEFENDANTS' EX PARTE APPLICATION FOR CONTINUANCE OF HEARING ON POST-JUDGMENT
MOTIONS, MEMO. OF POINTS AND AUTHORITIES AND KAUFMANN DECL. IN SUPPORT

1 Accordingly, the appropriate course at this time is to continue the hearing date on
2 the Commission's motions pending the outcome of the appeal in the writ action.

3 **IV. CONCLUSION.**

4 For these reasons, Defendant Ackenberg respectfully requests that the Court
5 continue the hearing date on the Commission's motions to intervene, vacate the stipulated
6 judgment and stay the case for six months to March 13, 2012, or such other date after
7 March 13, 2012 as is convenient to the Court. A proposed order has been lodged
8 concurrently.

9
10 DATED: August 22, 2011

DIANE R. ABBITT
LAW OFFICES OF DIANE ABBITT

and

RICHARDS, WATSON & GERSHON
A Professional Corporation
STEVEN H. KAUFMANN

By: 

Steven H. Kaufmann

Attorneys for Defendants
LISETTE ACKERBERG TRUST and
LISETTE ACKERBERG

1 Accordingly, the appropriate course at this time is to continue the hearing date on
2 the Commission's motions pending the outcome of the appeal in the writ action.

3 **IV. CONCLUSION.**

4 For these reasons, Defendant Ackenberg respectfully requests that the Court
5 continue the hearing date on the Commission's motions to intervene, vacate the stipulated
6 judgment and stay the case for six months to March 13, 2012, or such other date after
7 March 13, 2012 as is convenient to the Court. A proposed order has been lodged
8 concurrently.

9
10 DATED: August 22, 2011

DIANE R. ABBITT
LAW OFFICES OF DIANE ABBITT

and

RICHARDS, WATSON & GERSHON
A Professional Corporation
STEVEN H. KAUFMANN

By: 

Steven H. Kaufmann

Attorneys for Defendants
LISETTE ACKERBERG TRUST and
LISETTE ACKERBERG